



**CITY OF LODI
COUNCIL COMMUNICATION**

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AGENDA TITLE: Authorize City Attorney to Issue "Comfort Letter" to Rivergate Partners, L.P. in Connection with the Potential Sale of the former Cottage Bakery Restaurant Located at 203 S. School Street.

MEETING DATE: February 7, 2007 City Council Meeting

PREPARED BY: City Attorney's Office

RECOMMENDED ACTION: Authorize City Attorney to Issue "Comfort Letter" to Rivergate Partners, L.P. in Connection with the Potential Sale of the former Cottage Bakery Restaurant Located at 203 S. School Street.

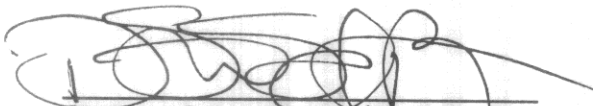
BACKGROUND INFORMATION: The former Cottage Bakery Restaurant site potentially overlies two Pce/Tce contamination plumes, the Central Plume and the Northern Plume. However, investigation to date by the City and other defendants has uncovered no evidence that the site contributed to the contamination.

Rivergate Partners, LP, owners of the site are in negotiations for the potential sale of the site. The purchasers are concerned about the potential for the City to pursue recovery against them upon their purchase. This concern could be allayed through the issuance of a "Comfort Letter" which would with certain qualifications indicate the City's determination not to pursue the current owners or their successors. Based upon my understanding that the Council does not desire to expand the litigation and the lack of any evidence that this site contributed to the contamination, I recommend the Council authorize me to issue a comfort letter in the form attached hereto.

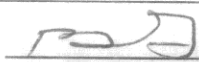
FISCAL IMPACT: N/A

FUNDING AVAILABLE: N/A

Approved:


Stephen Schwabauer, City Attorney

APPROVED:


Blair King, City Manager

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CITY OF LODI
CITY ATTORNEY'S OFFICE



D. STEPHEN SCHWABAUER
City Attorney

JANICE D. MAGDICH
Deputy City Attorney

February 14, 2007

Via Facsimile and Mail

Mr. Terry Knutson
Rivergate Partners, L.P.
203 S School Street
Lodi, California 95240

Re: 203 S. School Street, Lodi, CA

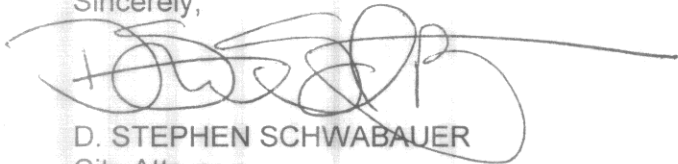
Dear Mr. Knutson:

Rivergate Partners, L.P. owns property located at 203 S. School Street in Lodi situated within the Lodi Central Plume Area ("CPA"). The CPA is a groundwater plume containing Tetrachloroethene (PCE). Rivergate Partners and its predecessors in interest are not known to have contributed to the contamination in the CPA and the City of Lodi has entered into settlements with all of the parties who are known to have contributed contamination to the CPA, and has undertaken the obligation to clean up the contaminated soil and groundwater in the CPA.

This letter will confirm that the City Council authorized me at its meeting on February 7, 2007 to affirm that the City of Lodi will not pursue environmental claims against Rivergate Partners, L.P. or their successors or assigns under CERCLA, or under any other environmental liability theory (such as nuisance) for the contamination in the CPA. This statement of intent does not apply to liabilities that could arise if Rivergate Partners or its successors or assigns actually contribute at some future date to the contamination.

If you have any questions or concerns regarding this matter, please contact me.

Sincerely,


D. STEPHEN SCHWABAUER
City Attorney

DSS/pn

cc: City Council
City Clerk